

## Opinion No. [29-113]

November 8, 1929

**TO:** Office of the Attorney General of New Mexico

TAXATION -- Penalty and interest on delinquent taxes.

### OPINION

Acknowledgment is made of the receipt of your letter of the 7th inst. in which reference is made to our opinion rendered October 26, 1929, construing statutes relative to the dates upon which unpaid taxes become delinquent, the interest and penalty to be added and the issuing of certificates of lien for delinquent taxes on real estate.

From a very careful examination and study of your letter and a comparison of that letter with our opinion as rendered I believe our ideas coincide exactly. You point out a statement in our opinion which you say is not clear to you and probably is not clear to county treasurers. It appears that this lack of clarity is due to language which we used in specifying the taxes, interest and penalties to be incorporated into the certificates of lien provided for, the interest to be computed on the face of such certificate and the effect thereof. Although the language in which our opinion was rendered yet seems to me of easy construction, our ideas may be more specifically expressed as follows:

- (a) The first half of the taxes levied for any given year if unpaid become delinquent on December 1 of that year.
- (b) The second half of taxes levied for any given year if unpaid become delinquent on May 1 of the following year.
- (c) All delinquent taxes bear interest from the date of delinquency at the rate of one per cent per month until paid (or merged in lien certificate).
- (d) Six months after the date of delinquency of the **second half** of taxes levied in any year, a penalty of ten per cent of all taxes for that year, unpaid at that time, shall be added.
- (e) Certificates of lien shall be issued on all real estate against which taxes are delinquent on the date when the ten per cent penalty is to be added.
- (f) The face value of a certificate of lien at the date of issue is made up of the delinquent taxes, interest thereon, and the ten per cent penalty and to this may be added, from time to time, subsequent delinquent taxes.
- (g) Certificates of lien bear interest on the **face value** at the rate of one and one-half per centum per month until paid.

In explanation of our observation as to the compounding of interest, you will note that all interest on delinquent taxes, which has accrued upto and including the date of issuance of the certificate of lien, becomes a part of the face value of such certificate and interest thereafter is computed not on the original tax but on the face value of the certificate at the rate of one and one-half (1 1/2) per cent per month. It is this to which reference was made as a compounding of interest. You are perfectly right in your deduction that there is no compounding prior to that time.

In your letter you construe the provision relative to the penalty of ten per cent (10%) to mean "that the treasurer must collect ten per cent penalty in addition to the interest on all delinquent taxes paid after November 1 of each year, such delinquent taxes to include real and personal property taxes." In this we agree with you since no **delinquent** tax will be paid after November 1 except such tax as may be subject to the penalty. Theoretically, however, taxes on real estate, delinquent at that time are merged in the certificate of line provided for, the penalty being included in the face of such certificate. As a practical proposition, however, the collectors have ninety days in which to prepare those liens within which time the treasurer may make collection of such delinquent taxes and should collect also the penalty.

If we have not yet succeeded in making our position clear or if in any particular you desire further discussion, we shall appreciate your bringing such particular to our attention.